

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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16 CV 08790 (---)

SERENDIP LLC,

Plaintiff,

COMPLAINT

vs.

HUGH MURRAY ATKIN,

Defendant.

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Plaintiff Serendip LLC for its Complaint for copyright infringement,
alleges as follows:

PARTIES

1. Plaintiff Serendip LLC (hereinafter “Serendip”) is a limited liability company formed under the laws of the State of New York, with its principal place of business in this District, and is the owner of the copyrights in Wendy Carlos’s music works and master sound recordings.

2. Upon information and belief, defendant Hugh Murray Atkin (hereinafter “Defendant”) is a foreign individual residing in Australia, who uploads videos to YouTube.com.

JURISDICTION AND VENUE

3. This Court has jurisdiction of this action for copyright infringement pursuant to 17 U.S.C. § 101 *et seq.* under 28 U.S.C. § 1338(a).

4. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (c)(3), because the subject copyrights are situated in this District and the Defendant does not reside in the United States.

BACKGROUND FACTS

5. Wendy Carlos arranged, orchestrated, performed and recorded music of J.S. Bach on the 1968 album “Switched-On Bach”, which won three Grammy awards and served to propel Carlos and electronic music with the Moog synthesizer into the public consciousness, while spending many weeks on the lists of top selling classical and popular music albums. After a follow-up album which further demonstrated the unmatched style and quality of Carlos’s music, Stanley Kubrick became interested in obtaining the services of Carlos to provide music for the motion picture “A Clockwork Orange”, theatrically released by Warner Bros. in 1971. Pursuant to an agreement with Kubrick’s production company, Wendy Carlos composed or arranged, orchestrated, performed and recorded six pieces of music over a period of more than one year for specific use in the soundtrack and trailer of the motion picture. “A Clockwork Orange” made the American Film Institute’s list of 100 greatest motion pictures, and also appears on lists of the best motion picture music soundtracks.

6. Compensation paid to Serendip for the use of Wendy Carlos’s music comes from royalties from sales of recorded media such as compact discs, performing rights royalties when the music is heard on radio, television or other venues pursuant to blanket licensing, and specific synchronization and master use licenses required when the music is used in connection with motion picture, television or other video images, and radio or Internet uses. In general, following the early years after an album is released, the primary source of revenue, particularly for the music originally done for motion picture use, arises from music synchronization and master use licenses, and Serendip receives far more license requests for music from “A Clockwork Orange” soundtrack than any other music by Wendy Carlos.

7. With the advent of the Internet and websites such as eBay.com and

YouTube.com, Serendip has been forced to monitor the content of such sites for the sale of pirate copies of Wendy Carlos's albums or the posting of her music on websites, unauthorized by Serendip or the law. In so doing, Serendip makes use of provisions of the Digital Millennium Copyright Act (DMCA), pursuant to 17 U.S.C. § 512, to protect Serendip's copyrights. Upon information and belief, since 1998, Serendip has found hundreds of unauthorized copies of Wendy Carlos's music for sale on eBay.com, and since 2007, thousands of unauthorized uses of her music on YouTube.com, with the majority utilizing Wendy Carlos's music from "A Clockwork Orange" soundtrack.

SERENDIP'S COPYRIGHTS

8. The music at issue in this action, Wendy Carlos's music arrangement and recorded performance of the "William Tell Overture", was used in the soundtrack of the motion picture "A Clockwork Orange" and also in the trailer for the motion picture. The master sound recordings for the music used in "A Clockwork Orange" soundtrack were fixed in a phonorecord and registered for copyright on June 2, 1972, with Registration Certificate N2920. Serendip, as the present owner of Wendy Carlos's master sound recordings, renewed the copyright in the "Clockwork Orange" master sound recording, effective December 29, 2000, with Registration Certificate RE 851-992.

9. The copyrights for the music and master sound recording works for Wendy Carlos's complete score music for "Clockwork Orange", including the "William Tell Overture", and music not used in the motion picture, as fixed and published on a phonorecord, were registered by Serendip on November 27 2007, with Registration Certificates SR0000610074 and PA0001590608.

10. Serendip is the owner of the copyrights in Wendy Carlos's music and sound recording works relevant to the present claims of this action. Serendip has never assigned the copyrights in such music and sound recording works to any

other entity.

11. The copyrights in music and master sound recording works used in the soundtrack of a motion picture work are separate from the copyright for the motion picture itself. Accordingly, any use of a motion picture requires separate copyright licenses for music synchronization and master sound recording use in addition to a license for use of the motion picture images.

COPYRIGHT INFRINGEMENT

12. Serendip incorporates by reference paragraphs 1 – 11 as if set forth herein.

13. Unbeknownst to, and without permission or license from Serendip, Defendant made derivative use of Wendy Carlos's music arrangement and master sound recording works of the "William Tell Overture", in the soundtrack of Defendant's video, entitled "A Clockwork Trump vs. A Trumpwork Orange." On or shortly before October 23, 2016, with the apparent purpose of monetizing the video for his own benefit, and with his later stated purpose of "providing satirical political comment on the 2016 US Presidential Election campaign of Donald Trump," Defendant uploaded his video with user name Hugh Atkin to YouTube.com.

14. Defendant's approximately one minute 17 second video incorporates recorded music taken from a commercially released album (phonorecord) of Wendy Carlos's music from "Clockwork Orange." The music usage in the video consists of reproduction of the entirety of Wendy Carlos's music arrangement and master sound recording works of the "William Tell Overture." The music as used in the video, is unchanged from the original arrangement and recorded performance, and is synched to picture as the original motion picture trailer for "A Clockwork Orange", in addition to other images inserted by Defendant. At no time, does Defendant's video comment on Wendy Carlos's music in any way.

15. Defendant's video making such unauthorized use of Wendy Carlos's recorded music would require two individual copyright licenses: a synchronization license for the music arrangement and a master use license for the sound recording of "The William Tell Overture." These works, as well as other works from "Clockwork Orange" have been licensed by Serendip on multiple occasions, with individual copyright license fees offered and agreed to by licensees as high as \$30,000, which means \$60,000 total for the two licenses required. Serendip has a long established minimum fee of \$5,000 for any individual copyright license. Defendant's gratuitous and unlicensed use of Serendip's copyrighted music and sound recording works would have a deleterious effect on the potential future market and value of these works.

16. Defendant has actual or constructive notice that Wendy Carlos's music and sound recording works are copyrighted and are registered by Serendip in the United States Copyright Office. However, Defendant did not contact Serendip or Wendy Carlos, or anyone, to inquire about obtaining the required copyright licenses for music use in his video.

17. On October 24, 2016, Serendip submitted to YouTube.com a DMCA takedown notice pursuant to 17 U.S.C. § 512(c)(1)(C), alleging that Defendant's video use of Serendip's copyrighted music and sound recording works was not authorized by Serendip or the law. After YouTube disabled access to Defendant's video on its website and, upon information and belief, without consulting an attorney, Defendant submitted a DMCA counter-notification to YouTube pursuant to 17 U.S.C. § 512(g)(2), alleging that his video was removed due to a mistake or misidentification of the material to be removed, and consenting to jurisdiction of a Federal District Court in the United States. On or about October 27, 2016, YouTube provided Serendip with a copy of the counter-notification, and notified Serendip and the Defendant that, as a result of the

counter-notification, Serendip must file a federal court action within 10 business days or YouTube may reinstate the video to YouTube.com.

18. Defendant has infringed Serendip's exclusive rights in its registered copyrighted music arrangement and sound recording works by, *inter alia*, preparing a derivative video work based upon Serendip's copyrighted works, uploading the video containing infringing copies of Serendip's copyrighted works onto YouTube.com, and publicly performing such works by means of a digital audio transmission. Defendant therefore has directly infringed Serendip's exclusive rights of reproduction, preparation of derivative works, and public performance of musical and sound recording works under 17 U.S.C. § 106(1), (2), (4) and (6).

19. Defendants's acts of infringement have been willful, intentional, and purposeful, in disregard of and indifferent to Serendip's rights.

20. As a direct and proximate result of Defendant's infringement of exclusive rights under Serendip's copyrights for the music arrangement and sound recording works of "William Tell Overture", Serendip is entitled to statutory damages for each copyright pursuant to 17 U.S.C. § 504.

21. Defendant's conduct is causing and, unless enjoined by this Court, will continue to cause Serendip great and irreparable injury that cannot fully be measured or compensated in money. Serendip is without an adequate remedy at law. Pursuant to 17 U.S.C. § 502, Serendip is entitled to a permanent injunction prohibiting the Defendant from taking any action which infringes any of the exclusive rights under Serendip's copyrights in the respective music and sound recording works, including, without limitation, uploading a video containing any such work to YouTube.com or any other website.

WHEREFORE, Serendip prays for relief against Defendant Hugh Murray Atkin, as follows:

(a) for a declaration that Defendant has willfully infringed Serendip's copyrights, including without limitation, the music arrangement copyright and the sound recording copyright for "William Tell Overture";

(b) that, pursuant to 17 U.S.C. § 504, Serendip be awarded its actual damages, or, upon Serendip's election, statutory damages;

(c) that, pursuant to 17 U.S.C. § 502, Defendant be permanently enjoined from infringing Serendip's copyrights in the respective music and sound recording works in any manner, including, without limitation, uploading the works to YouTube.com or any other website;

(d) that, pursuant to 17 U.S.C. § 505, Serendip be awarded its costs and attorneys' fees; and

(e) such other and further relief to Serendip as this Court may deem to be just and proper.

Date: New York, New York

November 10, 2016

By: _____s/_____

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